



State AMS No.: \_\_\_\_\_  
MaineDOT CSN: \_\_\_\_\_  
TEDOC No.: \_\_\_\_\_

**Local Project Agreement**  
Between the  
**Maine Department of Transportation**  
And the  
**Town of Kittery**

**Route 1/Route 236 Traffic Circle Improvements: MaineDOT WIN 018184.00**

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This Agreement for the above-referenced Project is made between the Maine Department of Transportation, an agency of Maine State Government having its headquarters on Child Street in Augusta, Maine ("the **MaineDOT**,"), and the Town of Kittery, a municipal corporation and body politic having its principal offices at 200 Rogers Road in Kittery, Maine ("the **Town**.")

WHEREAS, the Project described herein was selected for funding by the Kittery Area Comprehensive Transportation System ("**KACTS**,"), the designated Metropolitan Planning Organization for the Kittery Urbanized Area, located at 21 Bradeen Street, Suite 304, in Springvale, Maine; and

WHEREAS, this Agreement sets out the terms and conditions of the funding for the Project, as programmed by **KACTS** and approved by the **MaineDOT**.

NOW, in consideration of the foregoing, the **MaineDOT** and the **Town** hereby agree as follows:

**ARTICLE I. DEFINITIONS**

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- A. Project: Design and construction of pedestrian safety and drainage improvements in the vicinity of the traffic circle at the intersection of Route 1 and Route 236 in Kittery, Maine, as further described in *Attachment B* to this Agreement ("the **Project**.") The work shall be performed by or for the **Town** and accepted by the **MaineDOT**.
- B. Project Coordinator: The person designated by the **Town** to administer the Project and oversee all local responsibilities. This person is the Town's liaison to the MaineDOT.
- C. Project Manager: The person designated by the **MaineDOT** to oversee all State responsibilities. As the MaineDOT's liaison to the Town, this person shall serve in a review and advisory capacity to ensure that all Federal and State requirements are met.

**ARTICLE II. PROJECT DEVELOPMENT**

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- A. **FUNDING**. Total approved funding for the Project is One Million Two Hundred Thirty-Eight Thousand Four Hundred Thirteen Dollars (\$1,238,413,) consisting of ninety percent (90%) from the **MaineDOT** and a ten percent (10%) match from the **Town**, as shown in Article III. Project costs eligible for Federal and State funding shall not exceed this total amount without written approval from **KACTS** and the **MaineDOT**.

- B. AUTHORIZATIONS. The **Town** shall receive authorization from the **MaineDOT** before starting any work on the Project. Any municipal costs incurred prior to such approval will be *ineligible* for reimbursement and *will not* be credited toward the **Town's** match.
- C. BUDGET AND SCHEDULE. Upon receiving "Notice to Proceed" from the MaineDOT, the **Town's** Project Coordinator shall review with the **MaineDOT** Project Manager and KACTS staff the proposed scope of work, budget, schedule, and requirements for the Project. Within sixty (60) days of receiving such notice, the **Town** shall provide the **MaineDOT** with the following:
1. Milestones and dates that shall be used to establish a baseline schedule and measure the **Town's** progress.
  2. An updated line-item budget of itemized costs. Once the **MaineDOT** has approved the budget, expenditures may not exceed any cost category or line-item amount by more than ten percent (10%) without the **MaineDOT's** written approval.
- D. CHANGES IN SCOPE. Any change(s) to the scope of work or objectives of the Project shall be approved by the **MaineDOT**, in consultation with **KACTS**, through a Modification to this Agreement.
- E. CONSULTANT SERVICES. The **Town** may hire a consultant to perform engineering and design services, as follows:
1. A qualifications-based selection process shall be used, pursuant to Part 172 of Title 23 of the U.S. Code of Federal Regulations (CFR), "Administration of Engineering and Design Related Service Contracts." Price cannot be a scoring factor.
  2. No contract shall be awarded without the approval of the **MaineDOT**.
  3. The most recent version of MaineDOT's *Consultant General Conditions* shall govern all design or other non-construction work.
- F. DESIGN. Design plans, specifications, estimates and contracts shall be prepared in accordance with the **MaineDOT's** standards and procedures. Design shall conform to applicable sections of the MaineDOT's *Highway Design Guide*, its *Standard Specifications*, and its *Standard Details*. All such documents shall be submitted to the **MaineDOT** for review and approval before the **Town** requests authorization to advertise the Project for construction.
- G. UTILITIES. Plans and specifications shall conform to the MaineDOT's *Utility Accommodation Policy*. The **Town** or its consultant shall coordinate all matters regarding utilities, prepare all documentation, and submit such documentation to the **MaineDOT** for review before requesting authorization to advertise the Project for construction.
- H. PERMITS. The **Town** or its consultant shall obtain all approvals, permits and licenses necessary to construct the Project. Copies shall be provided to the **MaineDOT**.
- I. ENVIRONMENTAL PROCESS. The **Town** or its consultant shall prepare and submit to the **MaineDOT** for review all required environmental documents. The **MaineDOT** shall prepare and submit to the Federal Highway Administration all documentation required under the *National Environmental Policy Act*.

- J. PUBLIC PARTICIPATION. The **Town** shall provide for public participation as necessary to meet Federal/State requirements. The **Town** shall notify the **MaineDOT** Project Manager and **KACTS** of all public meetings.
- K. PROPERTY ACQUISITION. Given that Route 1 and Route 236 are state highways, the MaineDOT has primary responsibility for acquiring any property rights necessary to construct and maintain the Project. If the MaineDOT delegates this responsibility to the **Town**, the following process shall be followed:
1. Because this is a federally funded project, the **Town** shall follow the Federal *Uniform Relocation Assistance and Real Property Acquisition Act of 1970* (49 CFR, Part 24).
  2. The **Town** shall certify in writing to the **MaineDOT** that it has acquired all property rights before requesting authorization to advertise the Project for construction.
- L. FORCE ACCOUNT. If the **Town** intends to construct the Project with its municipal work force, rather than hiring a contractor through competitive bidding, it shall provide MaineDOT with a Public Interest Finding and obtain written approval from the **MaineDOT** before proceeding. If approved to use a "Force Account" process, the **Town** shall comply with applicable Federal regulations – 23 CFR, Parts 635.201 to 635.205.
- M. ADVERTISE AND AWARD. If a construction contractor is to be hired through competitive bidding, the **Town** shall obtain authorization from the **MaineDOT** before advertising the Project. Upon receiving such authorization, the **Town** shall follow the process outlined below:
1. Bids shall be solicited in accordance with the plans and specifications that the **MaineDOT** has approved.
  2. The **Town** shall follow Federal/State procurement policies and procedures, unless otherwise approved in writing by the **MaineDOT**.
  3. The **Town** and the **MaineDOT** may accept or reject any and all bids.
  4. The **Town** shall not award a contract without the **MaineDOT**'s written approval.
  5. The contract must specify that the Project comply with the MaineDOT's *Standard Specifications* (December 2002) and applicable special provisions.
  6. Upon contract award, the **Town** shall hold a preconstruction meeting involving the **MaineDOT** Project Manager, the contractor, and all utilities and other parties involved in the construction process.
- N. CONSTRUCTION. The **Town** shall administer any construction contract and provide the supervision, inspection and documentation needed to ensure that the Project is completed to the **MaineDOT**'s satisfaction in accordance with the plans, specifications and provisions of the contract, as follows:
1. Either the **Town's** Project Coordinator or a qualified designee certified by the **MaineDOT** in Local Project Administration shall be responsible for the Project at all times.

2. The **Town** shall use procedures acceptable to the **MaineDOT** to document the quantity and quality of all construction-related work. The **Town** shall provide weekly progress reports and shall retain all documentation as provided under Article VI.A.
  3. The **Town** shall provide for all required materials testing.
  4. Traffic in work zones shall be controlled in accordance with Part VI of the Federal *Manual on Uniform Traffic Control Devices for Streets and Highways* (MUTCD).
  5. If applicable, the **Town** shall upon completion provide the **MaineDOT** with “as-built” plans on Mylar or other acceptable archival-quality material.
  6. Upon completion, the **Town** shall provide compliance certification that the Project was constructed, quantities were measured and documented, and materials were tested in accordance with the plans, specifications and provisions of the construction contract, and in accordance with the policies and procedures approved by the **MaineDOT**.
- O. INSPECTION. The **MaineDOT** may inspect construction activities and documentation – and test any materials used – to ensure compliance with the construction contract. The **MaineDOT** may reject any work or materials not in such compliance.
- P. MAINTENANCE. If applicable, the **Town** shall develop and implement a maintenance plan acceptable to the **MaineDOT** ensuring that the completed facility is kept up appropriately for at least **twenty (20) years**. Maintenance, at a minimum, shall consist of general upkeep and repairs necessitated by weather, age and public use.

### **ARTICLE III. COST-SHARING & REIMBURSEMENT**

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- A. MAINEDOT SHARE. The **MaineDOT** – using Federal and State funds programmed by KACTS – shall be responsible for ninety percent (**90%**) of federally eligible Project costs, not to exceed One Million One Hundred Fourteen Thousand Five Hundred Seventy-One Dollars and Seventy Cents (**\$1,114,571.70**, or **90%** of **\$1,238,413**.) The **MaineDOT**’s contribution shall consist of a Federal share of eighty percent (80%) and a State share of ten percent (10%).
- B. LOCAL SHARE. The **Town** shall be responsible for ten percent (**10%**) of federally eligible Project costs, including Project costs incurred by the MaineDOT as described in Paragraph C below. The **Town**’s matching share is approximately One Hundred Twenty-Three Thousand Eight Hundred Forty-One Dollars and Thirty Cents (**\$123,841.30**, or **10%** of **\$1,238,413**.)
1. Additionally, the **Town** shall be responsible for any costs deemed ineligible for Federal/State funding and/or exceeding is One Million Two Hundred Thirty-Eight Thousand Four Hundred Thirteen Dollars (**\$1,238,413**.) unless otherwise approved in writing by the **MaineDOT** and **KACTS**.
- C. MAINEDOT COSTS. All costs incurred by **MaineDOT** staff in the development and oversight of the Project shall be accounted for with Project funds. Such costs may include – without being limited to – design reviews, environmental support, right-of-way support, and construction engineering. The **Town**’s share of such costs shall be reconciled and deducted from any payment due at final invoice, unless otherwise arranged between the **MaineDOT** and the **Town**.

D. REIMBURSEMENT, The **MaineDOT** shall reimburse the **Town** for the Federal and State shares of eligible costs described in Paragraph A of this Article III, as follows:

1. The **Town** shall bill the MaineDOT no more frequently than monthly for such costs, which are incurred whenever work is performed, goods and services are received, or a cash payment is made. All bills are subject to the following conditions:

- Claims shall be submitted on the Town billhead and reference WIN 018184.00.
- Each invoice shall contain an itemized account of expenditures consistent with the approved Project budget required in Article II.C. Backup documentation and proof of payment made must accompany each invoice.
- Each invoice must have an accumulative total by budget line item and a breakdown of the **MaineDOT's** and Town's shares of total costs.
- Each claim shall include a certification from the Town's Project Coordinator that all amounts claimed are correct, due and not claimed previously, and that all applicable work was performed in accordance with the terms of this Agreement.
- Any claim for less than one thousand dollars (\$1,000) shall be deferred until the next regular billing period in which at least one thousand dollars (\$1,000) is incurred or until a final invoice is submitted for reimbursement.

E. The **MaineDOT** shall recover any payment to the **Town** for any action or activity that subsequently is deemed ineligible for Federal funding. The **MaineDOT** shall have the additional remedy of withholding Project-related reimbursements to the **Town**.

F. The **MaineDOT** reserves the right to recover any payment found to have arisen from errors, omissions or failures by the **Town** to meet professional standards of construction engineering and inspection, through reductions in future reimbursements or through its common law, equitable and statutory rights of set-off. The **MaineDOT** shall notify the **Town** of any such claim and give the **Town** full opportunity to defend itself. If it is later determined that any such reduction was made in error, the **MaineDOT** shall promptly repay any amount so reduced.

G. Once the **MaineDOT** has paid the **Town's** final claim for reimbursement or otherwise closed out the Project, any remaining Federal and State funds shall go back to **KACTS**.

#### **ARTICLE IV. NON-APPROPRIATION**

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A. Notwithstanding any other provision of this Agreement, the **MaineDOT** shall be released from its obligation to make payment toward the Project – and may terminate this Agreement upon thirty (30) days' written notice to **Town** – if any of the following occurs:

1. The **MaineDOT** and/or **KACTS** do not receive adequate funds to support the Project; or
2. Funds otherwise programmed for the Project are de-appropriated; or
3. The **MaineDOT** does not receive the authority to expend funds programmed for the Project from the Maine State Legislature or Maine courts.

## **ARTICLE V. TERMINATION AND DEFAULT**

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- A. The **MaineDOT** reserves the right to terminate the payment provisions of Article III in the event of default by the **Town**, which is defined as:
1. Failure to show substantial progress – as determined by the **MaineDOT** Project Manager – within **18 months** of being given notice to proceed;
  2. Use of Project funds for a purpose other than what is authorized by this Agreement;
  3. Misrepresentation or falsification of any claim submitted for reimbursement;
  4. Failure to monitor adequately the quality of materials used and/or work performed under this Agreement by any consultant or contractor;
  5. Breach of any material provision(s) of this Agreement.
- B. The **MaineDOT** shall notify the **Town** in writing within five (5) days of learning of an event leading to a claim of default. If the **Town** fails to take corrective action within fifteen (15) days of receiving notification, the **MaineDOT** may terminate this Agreement upon written notice to the **Town**, with copies of such notice to **KACTS**.
1. Upon receiving notification, the **Town** and all consultants and contractors covered by this Agreement shall immediately cease work – except for any work required to protect public health and safety – and turn over to the **MaineDOT** all Project records and documentation within thirty (30) days of the effective date of such termination.
- C. If default occurs, the **MaineDOT** reserves the right to require the **Town** to repay any Project funds previously reimbursed. Once the Project has been closed, any remaining Federal and State funds shall go back to **KACTS**.

## **ARTICLE VI. RECORDS RETENTION, ACCESS & AUDIT**

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- A. Retention. All printed and electronic Project records prepared by the **Town**, its consultant(s) and contractor(s) shall be retained for **at least five (5) years** from the date of the **MaineDOT**'s acceptance of the **Town**'s final claim for reimbursement in accordance with 49 CFR Part 18, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments," except as otherwise provided below:
1. If any litigation, claim, negotiation, audit or other action involving such records has begun before the expiration of five (5) year period, then all records shall be retained at least until all action and resolution of all issues arising from it are complete.
- B. Access. The **Town** and its consultant(s) shall allow authorized representatives of the State of Maine and the Federal Government to inspect and audit pertinent Project documents. Copies of requested documents shall be furnished at no cost.
- C. Audit. Audits shall meet the "Generally Accepted Government Auditing Standards" (GAGAS).

## ARTICLE VII. GENERAL PROVISIONS

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- A. **LAWS AND REGULATIONS.** All activities conducted pursuant to this Agreement shall comply with applicable laws and regulations, including without limitation the following: Title 23 in the United States Code (USC) for statutory law and Title 23 in the U.S. Code of Federal Regulations (CFR) for administrative law.
- B. **INDEPENDENT CAPACITY.** When carrying out the provisions of this Agreement, the **Town**, its employees, contractors, consultants and/or agents are not acting as employees or agents of the **MaineDOT**.
- C. **INDEMNIFICATION.** To the extent allowed by law, the **Town** shall indemnify, defend and hold harmless the **MaineDOT** and any of its officers, employees, agents, and assigns from and against any and all claims, liability or expenses on account of bodily injury or property damage – including but not limited to reasonable attorney's fees and litigation costs ("Claims") – to the extent such Claims are caused, or alleged to have been caused, by negligent acts or omissions of the **Town** or any of its officers, employees, agents, representatives, supervisors, or consultants in connection with the performance of its obligations under this Agreement. Nothing herein is intended, or shall be construed, to waive any right, defense, privilege, immunity or limitation of liability that may be available to the Parties, or any of their respective officers, agents or employees, pursuant to the Maine Tort Claims Act (14 MRSA §8101 et seq.), the Eleventh Amendment to the United States Constitution, or any other provision of law. *This provision shall survive any termination or expiration of this Agreement.*
- D. **FLOW DOWN.** All contracts between the **Town** and any consultant, contractor or other third party shall contain or incorporate by reference all applicable provisions of this Agreement.
- E. **EQUAL EMPLOYMENT OPPORTUNITY (EEO).** The **Town** shall comply with applicable EEO requirements:
1. During the performance of any work undertaken pursuant to this Agreement, the **Town** shall not discriminate against any employee or applicant for employment because of race, color, religious creed, gender, national origin, ancestry, age, sexual orientation, or disability unless related to a bona fide occupational qualification. The **Town** shall take *affirmative action* to ensure that all such qualified applicants are employed and that all such employees are treated without regard to their race, color, religious creed, gender, national origin, ancestry, age, sexual orientation, or disability during any period of employment under this Agreement. Such action shall include, without limitation: employment, upgrading, demotions, transfers, recruitment, layoffs or terminations, rates of pay or other forms of compensation, and selection for training and apprenticeships. The **Town** shall post – or cause to be posted – prominently in places readily accessible to all employees and applicants for such employment notices setting forth the provisions of this paragraph.
  2. All of the foregoing equal employment opportunity provisions shall be included in any contract for services or work under this Agreement so that the provisions are binding upon each consultant and/or contractor – except for any contract for the purchase or supply of standard commercial supplies or raw materials.

3. The **Town**, its contractors and consultants shall list all employment opportunities arising out of or attributable to the Project with the Maine Job Service, except for openings to be filled with personnel already employed within those organizations before the effective date hereof and not hired in anticipation hereof.
- F. **CHANGES.** Any change(s) to the terms of this Agreement shall be approved by the **MaineDOT**, through a fully executed Modification to this Agreement.
- G. **THIRD-PARTY TRANSFERENCE.** The **Town** shall not sublet, sell, transfer, assign or otherwise dispose of this Agreement or any portion of it without the written consent of the **MaineDOT**. In no case shall any such action release the **Town** from liability under this Agreement.
- H. The Parties further acknowledge and agree that:
1. Neither the **Town** nor the **MaineDOT** shall be bound by any previous statement, correspondence, agreement or representation not expressly contained herein.
  2. This Agreement is made and shall be construed under the laws of the State of Maine.
  3. If any clause, section or provision is held to be invalid or unenforceable, that shall not affect the entire agreement, and the Parties shall negotiate a new clause, section or provision.

#### **ARTICLE VIII. EXPIRATION**

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All provisions of this Agreement – except for Article II.P (maintenance), Article VI.A (records), and Article VII.C (indemnification) – shall expire upon satisfactory completion of the Project or **four (4) years** from the date of **MaineDOT**'s signature, whichever occurs first, unless otherwise modified in writing by the parties to this Agreement.

#### **ARTICLE IX. APPROVAL**

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- A. **Debarment.** By signing this Agreement, the **Town** certifies – to the best of its knowledge and belief – that it and its employees, agents and/or representatives associated with the Project:
1. Are not now debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from eligible in this transaction by any Federal or State agency;
  2. Have not within the previous three (3) years been criminally convicted or had a civil judgment rendered against them – and are not now criminally or civilly charged – in connection with any of the following:
    - Obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; or
    - Violating Federal or State antitrust statutes or committing embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property.



3. Have not within a 3-year period preceding this agreement had one or more public transactions (Federal, State or local) terminated for cause or default.
- B. If the **Town** is unable to certify to any of the preceding statements in this Article IX, the **Town** shall attach an explanation to this Agreement.
- C. The **Town** agrees that it will not hire a consultant or contractor who is now debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal or State agency.
- D. Municipal authorization. The undersigned municipal representative assures that the **Town Council** of Kittery, Maine, has taken all steps necessary and lawful to approve the Project and the Town's entry into this Agreement, has appropriated or authorized the use of any necessary funds, and has further authorized said representative to execute this Agreement.
- E. Federal Funding Accountability and Transparency Act (FFATA). An authorized representative of the **Town** shall sign the required FFATA compliance form included as *Attachment A*. This Agreement shall be considered incomplete without said signed document.

IN WITNESS WHEREOF, the Parties have executed this Agreement effective on the date last signed.

**Town of Kittery**

**Maine Department of Transportation**

By: \_\_\_\_\_  
**Jonathan L. Carter, Town Manager**

By: \_\_\_\_\_  
**Joyce Noel Taylor, Director,**  
Bureau of Project Development

Date: \_\_\_\_\_

Date: \_\_\_\_\_

*I certify that the signature above is true and accurate. I further certify – pursuant to 10 M.R.S.A. §9407 and §9502 – that the signature, if electronic: (a) is intended to have the same force as my manual signature; (b) is unique to me; (c) is capable of verification; and (d) is under my sole control.*

***Note: An additional municipal signature is required on Attachment A, on the next page***

**ATTACHMENT A TO A LOCAL PROJECT AGREEMENT:**  
**Federal Funding Accountability and Transparency Act**

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The **Town of Kittery**, Maine and its contractors may be subject to the provisions of the Federal Funding Accountability and Transparency Act (“FFATA”) of 2006 as amended and any regulations, policies, procedures and guidance documents adopted pursuant thereto or in connection therewith.

Since the Federal portion of the Project exceeds \$25,000, an authorized representative from the **Town** shall sign this document under (B) below and return it with the Local Project Agreement. Additionally, the **Town** shall provide the following information, if applicable:

- A) The total compensation and names of the top five executives if:
- More than 80% of the Town’s annual gross revenues are from the Federal Government; and
  - Those revenues are greater than \$25 million annually; and
  - Compensation information is not already available through reporting to the U.S. Securities and Exchange Commission (SEC).
- B) The Legal Name and DUNS® Number on File with the federal Central Contractor Registration:

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Sign and Print Legal CCR Name

DUNS® Number <sup>(1)</sup>

- (1) The DUNS® Number is a unique nine-digit identification assigned and maintained solely by Dun & Bradstreet (D&B). DUNS® Number assignment is free for all businesses required to register with the US Federal government for contracts or grants. The Data Universal Numbering System or DUNS® Number is D&B’s copyrighted, proprietary means of identifying business entities.

**ATTACHMENT B TO A LOCAL PROJECT AGREEMENT:  
Scope of Work**

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**Scope of Work: Kittery Route 1/Rotary Project, WIN 18184.00**

**Prepared by: Mary Ann Conroy, Public Works Commissioner**

**August 10, 2011**

**Scope of Work:**

- Extend the sidewalk from the south end of Route 1 around the east side of the rotary (by DQ) to the opposite side of the rotary, down past Rogers Road Ext. to meet the existing sidewalk at the merge of the ramp onto Route 1A (granite curbing, 6' concrete SW)
- Connect the rotary sidewalk up Route 236/Rogers Road to meet existing sidewalk near Frisbee School (granite curb, 6' granite curb)
- Create a green space island for a consistent road width for the last 500 ft. towards the ramp (by Kittery Estates)
- Reconstruct the ROW, between Kittery Estates and the ramp to the outlets, to create a bicycle and pedestrian connection to Adams Lane to Route 1.
- Replace all pavement and concrete curbing on the traffic circle and all islands with granite curbing
- Complete drainage work to complete a closed drainage system at the rotary and other new SW areas
- Replace a failed 36" culvert across the north leg of Route 1 with a concrete pipe (from DQ open ditch to island in front of gas station)
- Overlay the circle, and the remaining sections of Route 1 and Route 236 to Frisbee Commons
- Redesign the connection at Rogers Road Ext to be more pedestrian friendly straight stop intersection down to Town Hall
- Redesign the curbing in front of Golden Harvest on Route 1 and create a green/pedestrian space.

**Notes:**

- The town will construct a new sidewalk in front of Town Hall on Rogers Road Ext.
- The town had completed some of the survey work (Attar Engineering)
- The town has started some draft design work for connecting Town Hall (Attar Engineering)
- The town had completed a camera survey of the failing drain pipe.
- A possible ROW may be needed at the DQ if we need to maintain a grass shoulder/esplanade for drainage.
- The town is working with MaineDOT on an updated inspection of the Route 1A overpass that crossing over the rotary (very poor condition)- Overpass Bridge #3860 is currently planning a bridge replacement per memo from Megan Hopkin, dated July 28, 2011